

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

PERVIS T. PAYNE,

Plaintiff,

v.

GOVERNOR PHIL BREDESEN, et al.

Defendants.

No. 07-714

Judge Haynes

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Pervis Payne respectfully moves this Court to grant him summary judgment on the Eighth Amendment claims identified as Claims B & F in his complaint. See R. 1, ¶¶145-148 (Claim B); ¶¶167-169 (Claim F). As more fully explained in an accompanying memorandum, Plaintiff is entitled to summary judgment in light of Judge Trauger's recent entry of judgment on identical claims against the defendants in Harbison v. Little, M.D.Tenn. No. 3:06-cv-1206, 2007 U.S. Dist. Lexis 72410 (M.D.Tenn. Sept. 19, 2007). This Court should therefore enter judgment in Plaintiff's favor, enjoining the Defendants from executing Plaintiff under the current April 30, 2007 Execution Procedures For Lethal Injection, because such procedures violate the Eighth Amendment to the Constitution. See Harbison, 2007 U.S. Dist. Lexis 72410, p.\*91-92.<sup>1</sup>

<sup>1</sup> Given *Harbison* and the Supreme Court's grant of certiorari in Baze v. Rees, 551 U.S. \_\_\_\_ (Sept. 25, 2007) (reviewing constitutionality of lethal injection), Pervis Payne respectfully moved the Tennessee Supreme Court to vacate his current December 12, 2007 execution date. Payne noted that numerous cases, including the United States Supreme Court, have stayed lethal injections to await *Baze*. See e.g., Turner v. Texas, 551 U.S. \_\_\_\_ (Sept. 27, 2007); Ex Parte Heliberto Chi, No. WR-61,600-02 (Tex. Cr. App. Oct. 2, 2007); State v. Landrigan, No. CR-90-323-AP (Ariz. 2007); American Civil Liberties Union v. Skolnick, No. 50354 (Nev. Oct. 15, 2007). On October 22, 2007, the Tennessee Supreme Court refused to vacate its execution order, indicating that Payne should seek any relief in federal court, given this pending suit. State v. Payne, No. M1988-00096-SC-DPE-DD (Tenn. Oct. 22, 2007). Payne thus moves this Court to prevent the state from using the identical three-drug protocol declared unconstitutional in *Harbison* and at issue in *Baze*.